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SENSITIVE
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DEPT PASS AID AFR/SD FOR CURTIS, ATWOOD AND SCHLAGENHAUF
DEPT PASS TO USTDA-PAUL MARIN, EXIM-JRICHTER
DEPT PASS TO USTR-AGAMA
JOHANNESBURG FOR NAGY
USDOE FOR GEORGE PERSON
TREASURY FOR PETERS, SOLOMON AND RITTERHOFF
DOC FOR 3317/ITA/OA/BURRESS AND 3130/USFC/OIO/ANESA/REED

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SUBJECT: U.S. MISSION'S ADVOCACY ON PIB: SOME PROGRESS MADE, MORE
TO BE DONE

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¶1. (SBU) SUMMARY: The Mission has supported Nigeria's oil and gas reform and has worked with both the GON and the international oil companies on issues of concern within the proposed Petroleum Industry Bill. The bill has already had two readings in the National Assembly and public hearings were held July 27-31. Stakeholders were able to air their concerns during the hearings. The legislative Petroleum Industry Bill committees listened and took the issues for review. Today, the gap between the GON and the IOCs on a variety of issues has narrowed. These include greater support for the southern oil communities, positive movement on taxation, and deregulation of downstream production. However, problems remain in the fiscal arena, the structure of the new incorporated joint ventures, and sanctity of contract. Help is needed to make a better bill. Advocacy that asks the GON to drop the bill totally at this point will likely be met with strong resistance, so we must continue to work to resolve the remaining problem areas, particularly the fiscal provisions.
END SUMMARY.

GON and Industry GAP

¶2. (SBU) Outstanding concerns center on the following:

--Fiscal provision issues: domestic gas pricing, new deep water production sharing contract projects, joint venture terms, and all shareholder funding of new incorporated joint ventures (IJV);

--Major non-fiscal issues: licenses and leases, IJV provisions, benchmark-verify-approve (BVA) provision, discretionary powers of Minister/Agencies, dispute resolution, measurement point/midstream definition, penalties for failure to meet domestic gas supply obligations, community obligations, and the role of the National Oil Company (NOC).

¶3. (SBU) The Mission met with newly named Minister of Petroleum Resources Rilwanu Lukman in February 2009 to discuss the Petroleum Industry Bill (PIB). Lukman provided a detailed briefing and explained that the restructuring would provide a forum for reform, bring things to an even keel, implement transparency, remove bottlenecks, and curb corruption. He underscored that after the

bill was introduced to the National Assembly he would not be involved again until it became law. He explained that he did not want to taint the process and wanted full due process of the law. Lukman asked if the U.S. could help with consultants that could provide advice on the restructuring of the oil sector in a way that quality and efficiency would not be compromised.

¶4. (SBU) The Mission held a roundtable discussion with the IOCs in the summer of 2008 to better understand the issues with the PIB. The PIB was introduced into the National Assembly in January 2009 after having been in the drafting stage for eleven years. The Mission asked the IOCs and service companies to provide talking points so it could begin to advocate for the resolution of the controversial elements of the PIB. The Mission encouraged the IOCs to effectively engage the GON by reaching out to ministers and officials other than those with pure energy or security portfolios. Officials other than those with pure energy or security portfolios. The Mission also recommended that the IOCs expand their advocacy with key ministries (such as Finance and Commerce) and the National Assembly, highlighting the negative impact the PIB would have on Nigeria's finances, rather than concentrating on the more narrow interests of the industry.

¶5. (SBU) IOC engagement with the GON heightened as the July 27-31 public hearings approached. The Mission organized a multi-country diplomatic delegation (French, UK, and Dutch) that met privately with NNPC Chief Dr. Mohammed Barkindo followed by a discussion with 70 NNPC and Ministry managers and consultants to encourage more transparency in the oil and gas sector reform process and to raise concerns with controversial elements of the PIB. The Mission also sent letters of support and offers of assistance to the Minister of Petroleum Resources, and the House and the Senate PIB Committees through Honorable Bassey Out and Senator Lee Maeba, respectively. These concerns include:

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--The fiscal provisions of PIB could make the access to money for capital investment difficult and expensive, which would reduce oil and gas production as new projects fail to meet return on investment criteria;

--The methods of taxation called for in the PIB may reflect global norms individually, but are unacceptable in the aggregate;

--Government revenues will decline if new projects are delayed;

--Sustainable and profitable growth of the new IJVs will be at risk and funding issues for the joint ventures will be an issue;

--Investment risk will increase because many PIB provisions are unclear and open to multiple interpretations;

--The sanctity of contracts is a major issue; and

-- The lack of independent dispute resolution is a significant impediment for investors. New regulatory agencies will have unilateral authority to resolve disputes at the request of either party.

GON Moves to Gain Consensus on Controversial Elements

¶6. (SBU) The Mission has continued to meet with the Ministry and has kept an open dialogue with the Minister's key advisor, maintaining information flow to and from the Minister. The IOCs initially complained that the Minister would not work with them directly on the PIB. This has changed and the key advisor and the Special Advisor to the President have started meeting with the IOCs to gain consensus on several matters including fiscal and non-fiscal issues. The Minister found he was unable to stay away from the PIB due to its controversial elements. He took up each area of concern, including those posed by the southern oil communities and their governors, and is actively moving them toward resolution. Most recently, he has decided to bring a U.S. oil and gas expert to Nigeria to advise the tax authorities and the National Assembly

Committee on the PIB on tax issues.

¶7. (SBU) The GON began to realize by late August that they should begin mitigation efforts to insure that the bill would pass before the end of the calendar year. Negotiations with the southern oil communities and the resolution of the legal hurdles where the constitution would force changes in the PIB were a priority. The Ministry of Finance increased communication with the NNPC as a result of his discussions with the IOCs on the fiscal implications of the PIB. The Mission continued to take opportunities during this period to discuss taxation formulas, royalty issues, sanctity of contracts, and dispute resolution.

U.S. Agencies Step Up

¶8. (SBU) The U.S. Trade and Development Agency commissioned a consultant to identify project opportunities, provide recommendations, and develop scopes of work with budgets on October 6, 2009. The areas of work include:

--The development of infrastructure for downstream deregulation to make natural gas available for domestic consumption;

--The development of new gas processing, distribution, and storage infrastructure that would support gas powered vehicles;

--The implementation of new gas-to-liquids processes that would
Q--The implementation of new gas-to-liquids processes that would employ state-of-the-art technologies to make more efficient use of gas resources.

--The rehabilitation of refineries that would create new jobs for local workers for whom advanced technical training would be required and provided.

¶9. (SBU) U.S. Agency for International Development initiated plans

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for meetings with the Ministry of Petroleum Resources on October 14-23 to develop a work plan to reduce gas flaring and increase investments in the gas-to-power sector.

¶7. (SBU) Post has reported on the evolution of the PIB through the following cables:

--ABUJA 1836-ExxonMobil Executive Discusses the Status of Nigeria's Proposed Petroleum Industry Bill. The briefing on the industry's outreach to the GON was good news, but the gap between the industry and the GON is still too large;

--ABUJA 1764-Update on the Status of the Petroleum Industry Bill. Dialogue with the Ministry on the issues of revenue, profit, taxation, and a common method of calculation was fruitful. Consideration on some sort of technical arbitration is possible if the gap between the IOCs and the GON remains stagnant;

--ABUJA 1469-Action Request for Technical Assistance. Minister of Petroleum Resources Rilwanu Lukman sent a letter to the Mission seeking USG assistance to reduce gas flaring and to set up a policy and two regulatory bodies called for in the PIB. This provided USTDA and USAID with more clarity on the GON's needs;

--ABUJA 1457-Omnibus Legislation on Oil & Gas Reform Goes to Public Comment. The public hearing was informative. The industry and others, with few exceptions, seemed united on their support of the reform. There was large agreement on the areas of concern. The Mission's presence deepened relationships with both the IOCs and the Minister of Petroleum Resources;

--ABUJA 1400-Chief of Mission Delegation Meets Oil & Gas Chief Barkindo on Petroleum Industry Bill. A diplomatic mission (U.S., French, U.K., and Dutch) met with NNPC Chief Dr. Mohammed Barkindo to discuss several points within the PIB. Barkindo showed his willingness to work with the four Missions and admitted that there were areas within the PIB that could be reviewed. The U.S. Mission

offered technical assistance with the bill and its implementation;

--ABUJA 1328-Minister Takes Action on Gas Flaring. The Minister of Petroleum Resources held a technical meeting with engineers from the Ministry, the NNPC, and the U.S. firm SYNFUELS to discuss the gas-to-liquid (GTL) process to reduce gas flaring at the wellhead. The Minister followed up with a letter to the Mission to ask for technical assistance for this U.S. technology;

--ABUJA 1209-USTDA Visit Elicits GON Assistance Requests for Petroleum Sector. This meeting brought USTDA and the Minister together to discuss the Minister's desire for U.S. assistance. The meeting was successful with USTDA promising to look at what they could offer;

--ABUJA 1109-DAS Hengel Meets with GON Perm Sec for Petroleum Resources. This meeting focused on the GON's reforms as described by the GON Permanent Secretary. The meeting further confirmed the GON's desire to partner with the U.S. on developing Nigeria's oil and gas sector;

--ABUJA 1050-U.S. Roundtable on Energy and Climate Change Sets Stage for Further Cooperation. The roundtable provided an opportunity to engage the GON on a broader scale and opened the door to more Qengage the GON on a broader scale and opened the door to more decision makers/influencers like the President's Advisor on Petroleum Matters;

--ABUJA 262-New Petroleum Minister Lukman Plans to Revamp Troubled Energy Sector. The purpose of this meeting was to hear the GON's intent with the PIB, to open the door for continued dialogue, and to begin a U.S. advocacy role. The open door continues to be fruitful for both the GON and the Mission;

--LAGOS 155-Ambassador Encourages Oil Companies to Broaden their Political Base. This meeting helped the Mission to hear individual and joint concerns about the PIB. It also clarified that the IOCs could reach out to ministers outside the oil and security portfolio, governors, and the National Assembly to educate them on the

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industry's concerns and ask for guidance and suggested resolutions;

--ABUJA 259-Shell Briefs Ambassador on Oil & Gas Issues. This discussion between Shell executives and the Mission helped Post to understand the concerns about the new petroleum sector energy bill. Shell asked for the U.S., Dutch, and U.K. COMs to convey IOC-provided points on the bill to GON policymakers.

--08LAGOS 505- Oil Exec Says GON Not Ready for Joint Venture Restructuring. A Pan Ocean Oil Company executive explained that the proposed international (investor owned) joint ventures (IJV) would need to be structured and operate like the Nigerian Liquefied National Gas facility which has great control and transparency. This discussion helped the Mission speak with the GON about the seriousness of their intent.

--08 ABUJA 1563-U/S Jeffery Holds Roundtable Meeting with Ministry of Energy Officials. This meeting introduced the GON's intent to restructure the NNPC based on a report by the Oil and Gas Sector Reforms Implementation Committee (OGIC). Subsequent conversations with IOC contacts suggested that the reform was not new.

MCCULLOUGH